IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 6095 OF 2001 (M/S)
(Old No. 21473/1986)

State of U.P. … **Petitioner.**

Versus

T.S.Negi and another
… **Respondents.**

Dated 10.09.2004

Hon'ble B.S.Verma, J.

By means of the present Writ Petition, the petitioner-State has challenged the judgment and order dated 02.09.1986 passed by the District Judge, Dehradun (respondent no. 1) in Urban Land Ceiling Appeal No. 41 of 1984. By the impugned judgment and order ***(Annexure-2 to the writ petition)***, respondent no.2 allowed the appeal, modifying the order, dated 6-2-0984 of the Competent Authority, and declared only an area of 1185 sq. mt. of land shall be acquired by the State on the choice given by the appellant.

Brief facts giving rise to the Writ Petition are that the Competent Authority vide order dated 3.10.1978 declared 1909.5 sq. mt. of land to be excess vacant land held by the O.P.-respondent No.1. The respondent no.1 preferred appeal, which was allowed by order dated 7.12.1978 and the entire land of the respondent no.1 was exempted. The State went up in Writ Petition, which was dismissed by the High Court. Then the State filed Special Leave Petition before the Supreme Court and the case was remanded to the Competent Authority. It is after the remand that by the impugned order dated 7-3-1984 1427 sq.mt. land of the respondent no.1 has been declared as excess vacant land by the Competent Authority. The District Judge after considering the material on record ultimately held that only 1185 sq. mt. land is liable to be declared as excess vacant land in possession of the appellant-respondent no. 1. Accordingly, the District Judge, vide his

judgment and order dated 2.9.1986, modified the order of the Competent Authority, which gave rise to the present writ petition.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> ***"4. Abatement of legal proceedings.- All proceedings relation to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***
>
> ***Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."***

The Appellate Court, as mentioned earlier, allowed the appeals of respondent no. 1, and declared that the O.P./appellant holds excess vacant land to the tune of 1185 sq.mt. only and the same shall be acquired by the State on the choice given by the appellant. As stated by the learned Standing Counsel, Sri N.P.Sah, and Sri M.C.Tewari, appearing on behalf of the state, no declaration has been published under section 10(3) of the principal

Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous. Ordered accordingly.

(B.S. Verma, J.)

RCP